REMARKS

Claims 1-15 are pending in this application. By this Amendment, claims 1-3, 6, and 8 are amended. Support for the amendments to the claims may be found, for example, in the specification at page 5, lines 16-20 and page 9, lines 28-32. No new matter is added.

I. RESPONSE TO RESTRICTION AND ELECTION REQUIREMENT

In reply to the May 15, 2008 Restriction Requirement, Applicants provisionally elect Group III, claims 6-9, 12, and 15, and elect as a subgroup a pair of primers comprising at least 15 nucleotide units of the seqeunces set forth in SEQ ID NOs: 1 and 2, respectively, with traverse. At least claims 6-9, 12, and 15 read on the elected subgroup.

National stage applications filed under 35 U.S.C. §371 are subject to unity of invention practice as set forth in PCT Rule 13, and are not subject to U.S. restriction practice. *See* MPEP §1893.03(d). PCT Rule 13.1 provides that an "international application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept." PCT Rule 13.2 states:

> Where a group of inventions is claimed in one and the same international application, the requirement of unity of invention referred to in Rule 13.1 shall be fulfilled only when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features. The expression "special technical features" shall mean those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art.

A lack of unity of invention may be apparent "*a priori*," that is, before considering the claims in relation to any prior art, or may only become apparent "*a posteriori*," that is, after taking the prior art into consideration. *See* MPEP §1850(II), quoting *International Search and Preliminary Examination Guidelines* ("ISPE") 10.03. Lack of *a priori* unity of invention only exists if there is no subject matter common to all claims. *Id.* If *a priori* unity of invention exists between the claims, or, in other words, if there is subject matter common to

all the claims, a lack of unity of invention may only be established *a posteriori* by showing that the common subject matter does not define a contribution over the prior art. *Id.*

The Office Action fails to establish a *prima facie* case that there is a lack of unity of invention between the claimed primer pairs. PCT Rule 13.2 governs the situation involving a single claim that defines alternatives, the so-called "Markush practice". In order to properly require a restriction within Markush group of polynucleotides, the Office Action must establish that there is a lack of unity of invention between the recited polynucleotides. To do this, the Office Action must show that the polynucleotides do not share a common property or a significant structural element that is essential to the common property. *See, e.g.*, ISPE 10.52; MPEP §1850(III)(B). The Office Action has failed to show lack of either requirement. Therefore, the Office Action fails to show any lack of unity of invention between the primer pairs constituting the subgroups and, thus, requiring restriction between pairs of primers is clearly improper.

Reconsideration and withdrawal of the restriction and election requirement are respectfully requested.

II. CONCLUSION

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of the application are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,

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Date: June 13, 2008

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